

Internal Revenue Service, Treasury

§ 1.1502-99

(4) An election made under this paragraph (e) is irrevocable.

[T.D. 8824, 64 FR 36170, July 2, 1999, as amended by T.D. 9424, 73 FR 53985, Sept. 17, 2008]

§ 1.1502-97 Special rules under section 382 for members under the jurisdiction of a court in a title 11 or similar case. [Reserved]

§ 1.1502-98 Coordination with section 383.

The rules contained in §§1.1502-91 through 1.1502-96 also apply for purposes of section 383, with appropriate adjustments to reflect that section 383 applies to credits and net capital losses. For example, subgroups with respect to the carryover of general business credits, minimum tax credits, unused foreign tax, and net capital loss are determined by applying the principles of §1.1502-91(d)(1). Similarly, in the case of net capital losses, general business credits, and excess foreign taxes that are pre-change attributes, §1.383-1 applies the principles of §§1.1502-91 through 1.1502-96. For example, if a loss group has an ownership change under §1.1502-92 and has a carryover of unused general business credits from a pre-change consolidated return year to a post-change consolidated return year, the amount of the group's regular tax liability for the post-change year that can be offset by the carryover cannot exceed the consolidated section 383 credit limitation for that post-change year, determined by applying the principles of §§1.383-1(c)(6) and 1.1502-93 (relating to the computation of the consolidated section 382 limitation).

[T.D. 8824, 64 FR 36174, July 2, 1999, as amended by T.D. 8884, 65 FR 33760, May 25, 2000]

§ 1.1502-99 Effective/applicability dates.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, §§1.1502-91 through 1.1502-96 and §1.1502-98 apply to any testing date on or after June 25, 1999. Sections 1.1502-94 through 1.1502-96 also apply to a corporation that becomes a member of a group or ceases to be a member of a group (or loss subgroup) on any date on or after June 25, 1999.

(b) *Special rules*—(1) *Election to treat subgroup parent requirement as satisfied.* Section 1.1502-91(d)(4), §1.1502-91(d)(7), Example 4, §1.1502-92(b)(1)(iii), §1.1502-92(b)(2), Example 5, the last two sentences of §1.1502-95(b)(3), §1.1502-95(d)(2)(i), and §1.1502-96(e)(all of which relate to the election under §1.1502-91(d)(4) to treat the loss subgroup parent requirement as satisfied) apply to corporations that become members of a consolidated group in taxable years for which the due date of the income tax return (without extensions) is after June 25, 1999.

(2) *Principal purpose of avoiding a limitation.* The third sentence of §1.1502-91(d)(5) (relating to members excluded from a loss subgroup) applies to corporations that become members of a consolidated group on or after June 25, 1999.

(3) *Ceasing to be a member of a loss subgroup*—(i) *Ownership change of a loss subgroup.* Section 1.1502-95(d)(2)(ii) and §1.1502-95(d)(3), Example 3 apply to corporations that cease to bear a relationship described in section 1504(a)(1) to a loss subgroup parent in taxable years for which the due date of the income tax return (without extensions) is after June 25, 1999.

(ii) *Expiration of 5-year period.* Section 1.1502-95(d)(2)(iii) applies with respect to the day after the last day of any 5 consecutive year period described in that section that ends in a taxable year for which the due date of the income tax return (without extensions) is after June 25, 1999.

(4) *Reattribution of losses under §1.1502-36(d)(6).* Section 1.1502-96(d) applies to reattributions of net operating loss carryovers, capital loss carryovers, and deferred deductions in connection with a transfer of stock to which §1.1502-36 applies, and the election under §1.1502-96(d)(5) (relating to an election to reattribute section 382 limitation) can be made with an election under §1.1502-36(d)(6) to reattribute a loss to the common parent that is filed at the time and in the manner provided in §1.1502-36(e)(5)(x).

(5) *Election to apportion net unrealized built-in gain.* In the case of corporations that cease to be members of a loss group (or loss subgroup) before June 25, 1999 in a taxable year for which the due

date of the income tax return (without extensions) is after June 25, 1999, § 1.1502-95(a), (b), (c), and (f) apply to those corporations if the common parent makes the election described in the second sentence of paragraph (c)(1) of § 1.1502-95 in the time and manner prescribed in paragraph (f) of § 1.1502-95.

(c) *Testing period may include a period beginning before June 25, 1999—*

(1) *In general.* A testing period for purposes of §§ 1.1502-91 through 1.1502-96 and 1.1502-98 may include a period beginning before June 25, 1999. Thus, for example, in applying § 1.1502-92(b)(1)(i) (relating to the determination of an ownership change of a loss group), the determination of the lowest percentage of ownership interest of any 5-percent shareholder of the common parent during a testing period ending on a testing date occurring on or after June 25, 1999 takes into account the period beginning before June 25, 1999, except to the extent that the period is more than 3 years before the testing date or is otherwise before the beginning of the testing period. See § 1.1502-92(b)(1).

(2) *Transition rule for net unrealized built-in loss.* A loss group (or loss subgroup) that has a net unrealized built-in loss on a testing date on or after June 25, 1999 may apply § 1.1502-91A(g) (and § 1.1502-96A(a) as it relates to § 1.1502-91A(g)) for the period ending on the day before June 25, 1999 to determine under § 1.382-2T(d)(ii)(A) the earliest date that its testing period begins (treating the day before June 25, 1999 as the end of a taxable year.) Thus, for example, if a consolidated group with no net operating losses has a net unrealized built-in loss determined under § 1.1502-91(g) on a testing date after June 25, 1999, but, under § 1.1502-91A(g), does not have a net unrealized built-in loss for the period ending on the day before June 25, 1999, the group's testing period begins no earlier than June 25, 1999.

[T.D. 8824, 64 FR 36174, July 2, 1999, as amended by T.D. 9424, 73 FR 53986, Sept. 17, 2008]

§ 1.1502-100 Corporations exempt from tax.

(a) *In general—*(1) *Computation of tax liability.* The tax liability for a consolidated return year of a group of two or

more corporations described in section 1504(e) which are exempt from taxation under section 501 (hereinafter referred to in this section as “exempt group”) shall be determined on a consolidated basis by applying the provisions of subchapter F of chapter 1 of the code in the manner provided in this section. See section 1504(e) for tax-exempt corporations eligible to file a consolidated return.

(2) *Applicability of other consolidated return provisions.* The provisions of § 1.1502-1 through § 1.1502-80 shall be applicable to an exempt group to the extent they are not inconsistent with the provisions of this section or the provisions of subchapter F of chapter 1 of the Code. For purposes of applying the provisions of § 1.1502-1 through § 1.1502-80 to an exempt group, the following substitutions shall be made:

(i) The term “exempt group” shall be substituted for the term “group”;

(ii) The terms “unrelated business taxable income”, “separate unrelated business taxable income”, and “consolidated unrelated business taxable income” shall be substituted for the terms “taxable income”, “separate taxable income”, and “consolidated taxable income”, and

(iii) The term “consolidated liability for tax determined under § 1.1502-2” (or an equivalent term) shall mean the consolidated liability for tax of an exempt group determined under paragraph (b) of this section.

(b) *Consolidated liability for tax.* The tax liability for a consolidated return year of an exempt group is the tax imposed by section 511(a) or section 1201(a) on the consolidated unrelated business taxable income for the year (determined under paragraph (c) of this section), and by allowing the credits and surtax exemption provided in § 1.1502-2.

(c) *Consolidated unrelated business taxable income.* The consolidated unrelated business taxable income for a consolidated return year shall be determined by taking into account:

(1) The separate unrelated business taxable income of each member of the exempt group (determined under paragraph (d) of this section);

(2) Any consolidated net operating loss deduction (determined under